Postal Regulatory Commission
Submitted 10/16/2017 4:28:39 PM
Filing ID: 102136
Accepted 10/16/2017

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Market Dominant
Price Adjustment

Docket No. R2018-1

U.S. CHAMBER OF COMMERCE
MOTION TO UNSEAL LIBRARY REFERENCE AND
MOTION TO REQUEST ISSUANCE OF INFORMATION REQUEST
(October 13, 2017)

The U.S. Chamber of Commerce (Chamber) — the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations — respectfully requests the Postal Regulatory Commission (Commission) provide affected parties greater transparency with respect to the rates which the United States Postal Service (USPS) is proposing for Inbound Letter Post and Outbound Single-Piece First-Class Mail International (Outbound FCMI) in this proceeding. Specifically, the Chamber respectfully requests that the Commission (1) unseal library reference USPS-LR-R2018-1/NP1, First-Class Mail International and Inbound Letter Post Workpapers, and (2) to issue an information request to the USPS for the purposes of clarifying the record and generating sufficient information to evaluate the proposed rate adjustment for Inbound Letter Post.

1. Background

The Chamber is increasingly concerned that U.S. merchants and manufacturers are placed at an economic disadvantage to foreign merchants and manufacturers due to artificially low rates paid by foreign shippers for delivery of their merchandise within the U.S. at rates not available to domestic shippers.

In the present docket, USPS proposes to introduce new rates for market dominant products on January 21, 2018. Pursuant to the Commission's rules, USPS has filed detailed information on the proposed rates, the anticipated volumes and revenues, the justifications for discounts, and the calculations relating to compliance with the applicable price cap. 39 CFR § 3010.14 (2017). The Commission's rules provide that this information is publically available so that affected parties may comment on whether proposed rate adjustments comply the applicable statutory price caps and whether the proposed rates are consistent with "other relevant statutory provisions and applicable Commission orders and directives." 39 C.F.R. §§ 3010.11(b), 3010.11(c) (2017).

There is, however, a glaring exception in this generally transparent procedure. There is virtually no detailed public explanation of the rates proposed for international market dominant products: Inbound Letter Post and Outbound FCMI. In USPS's "Notice of Market Dominant Price Adjustment" at 10 (Oct. 6, 2017) (Notice), description of these products is cursory. In fact, the General Accountability Office looked at the proposed changes in terminal dues rates and the associated detail available to the public and stated, “GAO found that it is not possible to quantify the financial effects of the terminal dues system on various U.S. mail stakeholders because the data needed to conduct such an analysis are not readily available.”[1] Unlike for all other market dominant products, workpapers for these two products are filed as a nonpublic library reference. USPS-LR-R2018-1/NP1.

With respect to the Inbound Letter Post, USPS's explanation is limited to the following two sentences:

> The Inbound Letter Post price increase of 21.902 percent is a consequence of changes on terminal dues resulting from the Universal Postal Convention. These changes are outside the Postal Service’s control.[2]

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[1] “International Mail: Information and Alternatives to the Terminal Dues System” at 1 (GAO-18-112, Oct. 12, 2017).

[2] USPS, Notice at 10.

These statements by USPS raise fundamental threshold questions. The Universal Postal Convention (UPU Convention) that will enter into force on January 1, 2018, is the UPU Convention agreed by the 2016 Istanbul Congress of the Universal Postal Union (UPU). The United States has not formally approved this Convention in accordance with the procedures set out in the UPU Constitution[3] and is unlikely to do so in the next several months. Indeed, according to the State Department, “The United States has not formally approved the 2012 UPU Convention.”[4] Thus, the United States is not a party to the current 2012 UPU Convention and it is not certain to be a party to the 2016 UPU Convention when the rates proposed in this proceeding go into effect on January 21, 2018.

Even if the United States were to become a party to the 2016 UPU Convention by the end of January 2018, it is highly unlikely that any more than a handful of other UPU member countries will be parties to the Convention by that date.[5] At most, USPS will be obliged by the Convention to apply UPU terminal dues only to the letter post received from those few countries. For these reasons the explanation provided by the USPS is inadequate. How can the proposed rates for Inbound Letter Post be "a consequence of changes on terminal dues resulting from the Universal Postal Convention"? If the rates for delivery of Inbound Letter Post are "outside the Postal Service's control," then what authority has determined the rates that USPS is proposing and under what legal criteria should these rates be evaluated?

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[3] Constitution of the Universal Postal Union (as amended through the Ninth Additional Protocol, 2016), arts. 25, 26. This document is included in UPU, *Decisions of the 2016 Istanbul Congress* (2017). http://www.upu.int/uploads/tx_sbdownloader/actsLastCongressActsEn.pdf.

[4] Letter of Charles S. Faulkner, Bureau of Legislative Affairs, U.S. State Department, to the Honorable Kenny Marchant, Member of Congress, July 27, 2017 at 1, Docket No. IM 2016-1.

[5] As of September 1, 2018, it appears that only 33 out of 192 member countries have formally approved the 2012 UPU Convention. *See* UPU, “List of member countries of the Universal Postal Union Indicating their contribution class, geographical group and legal situation with regard to the Acts of the Union: Position at 1 September 2017.” http://www.upu.int/uploads/tx_sbdownloader/ actMemberCountriesLegalSituationEn.pdf.

With respect to Outbound FCMI, the situation is more straightforward. USPS estimates that the volume of outbound letter post documents (excluding 9.1 million goods in small letters and flats) is about 146 million items. Since USPS proposes no change in outbound postage rates, the projected revenue will not change. What is unclear, however, is why USPS is raising domestic First Class Mail rates by 2 percent but not raising rates for Outbound FCMI at all when it appears that, due to the increase in terminal dues, the costs of Outbound FCMI will increase significantly more than the cost of domestic First Class Mail. Again, the non-public status of the USPS-LR-R2018-1/NP1 leaves affected parties without the information needed for informed comment.

To assist affected parties in providing informed comments with respect to the proposed rates for international market dominant products, the Chamber moves the Commission to take two steps. First, unseal USPS-LR-R2018-1/NP1. Second, request additional information from the USPS with respect to its proposal for Inbound Letter Post rates.

2. Unseal USPS-LR-R2018-1/NP1

Section 504(g)(3) of title 39, incorporated in 39 C.F.R. § 3007.33 , establishes the basic rule for a Commission decision whether to unseal material that has been filed under seal. This provision directs the Commission to “balance the nature and extent of the likely commercial injury identified by USPS against the public interest in maintaining the financial transparency of a government entity competing in commercial markets."

In the present case, the application of these criteria appears self-evident when USPS-LR-R2018-1/NP1 is compared to the other library references prepared by USPS. USPS has not identified any likely commercial injury from public disclosure of USPS-LR-R2018-1/NP1. Since all products in this proceeding are market dominant products for which, by definition, there is no effective competition, disclosure should not be an issue. The international First Class Mail products which are the subject of USPS-LR-R2018-1/NP1 constitute only about 2.5 percent of First Class Mail delivered by USPS and 0.8 percent of First Class Mail collected and dispatched by USPS. Compared to the total business of USPS, international market dominant products account for only about 0.45 percent of delivered mail and 0.15 percent of collected mail. If a transparent analysis of USPS's other market dominant products does not result in "likely commercial injury" to USPS, there is no apparent reason why public disclosure of the data relating to such a small additional slice of the market dominant product pie should cause any significant commercial injury to USPS.

On the other side of the equation, the "public interest in maintaining the financial transparency of a government entity competing in commercial markets" is well established. The basis for the Commission's procedures in this proceeding is to give the public a reasonable opportunity to submit informed comment on proposed rates for market dominant products. No one would support nonpublic treatment of the workpapers relating to domestic market dominant products. The public interest in financial transparency is no different with respect to international market dominant products than with respect to domestic market dominant products. Indeed, the public interest in transparency may well be greater in the case of rates for Inbound Letter Post, for it appears that U.S. merchants are adversely affected by the long practice of charging less for the delivery within the United States of foreign letter post than for delivery of domestic letter post. As the Commission has explained,

> [D]omestic mailers are subsidizing the entry of Inbound Letter Post by foreign mailers who use the same postal infrastructure but bear none of the burden of contributing to its institutional costs. Because UPU terminal dues rates are not equivalent to domestic postage rates in the destination country, the Commission considers them discriminatory.[6]

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[6] *Annual Compliance Determination Report Fiscal Year 2016* at 66 (2017). *See also* the testimony of Paul Misener, Vice President, Global Public Policy, Amazon.com in *Fair Competition In International Shipping: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Government Reform*, 114th Cong., 1st Sess. (2015). *See also* PRC Docket IM2016-1, Section 407 Proceeding, comments by Charles Corporation, Designs by Nathan; Susan Wells, Seasons Creations; Lexington Institute; Frontiers of Freedom; Brenda Nishimoto, The Unlimited US/VenetianBeadShop.com; Ina Steiner, EcommerceBytes.com; Wayne Patterson, Oregon Deals; US Chamber of Commerce; Garvey Rich, KDdanceNewYork.com; Marjorie Alexander, Puppy Love Jewelry; Charles Strusz; Ryan Killian, RK Toy and Hobby; Karen Amidon, Ms. K; Theo Chen, AutographsForSale.com; Barbara Henderson, somanypostcards.

This disparity is not insignificant as the Commission has determined that terminal dues rates charged for inbound international mail are below the U.S. Postal Service's actual cost of delivery.[7]

The real question, then, is why international market dominant products should be treated any differently than domestic market dominant products in the Commission's review? There seems to be no plausible justification. Accordingly, the Chamber requests that the Commission unseal library reference USPS-LR-R2018-1/NP1.

3 Information request

In order to clarify the legal situation of the proposed rates for Inbound Letter Post, the Chamber requests that the Commission pose the following requests for information to USPS:

1 (a) What is the legal basis for the statement that changes in rates for Inbound Letter Post are "outside the Postal Service's control"?

(b) If these rates are not determined by USPS, what government agency requires USPS to implement these rates and under what legal authority?

(c) Please submit copies of all legal directives or analyses which establish or substantiate the statement that the rates for Inbound Letter Post are "outside the Postal Service's control" and identify the authority that exercises such control.

2 (a) If the USPS is legally obliged to charge UPU terminal dues rates for delivery of Inbound Letter Post received from some UPU member countries, to which origin countries does this obligation apply?

(b) For clarification, please identify which UPU member countries were

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[7] "Negative contribution increased from $97.9 million in FY 2015 to $134.5 million in FY 2016, in large part due to a 23 percent increase in volume." *Annual Compliance Determination Report FY 2016* at 65-66 (Mar. 28, 2017.

bound, as a matter of international law, to implement the terminal dues rates of the 2012 UPU Convention on January 1, 2014?

(c) Which countries are today bound to implement the terminal dues rates of the 2012 UPU Convention?

(d) Which UPU member countries are likely to be bound, as a matter of international law, to implement the terminal dues rates of the 2016 UPU Convention on January 1, 2018?

(e) Please provide any documentation or legal analyses which provide the basis the above answers.

3 (a) If USPS is not legally obliged to charge UPU terminal dues rates for delivery of Inbound Letter Post, then is the legal basis for the proposed rates found under 39 U.S.C. § 404(b)?

(b) If yes, what considerations, if any, justify charging more or less for the delivery of Inbound Letter Post than for the delivery of similar domestic mail (i.e., domestic mail with similar characteristics that has been aggregated and tendered in a similar manner)?

(c) Why should rates for the delivery of Inbound Letter Post not be equally available to domestic mailers under the same conditions?

(d) Please provide any documentation or legal analyses which provide the basis the above answers.

4 (a) Please provide a comparison by domestic rate cell of (1) the rates proposed for delivery of Inbound Letter Post, (2) the rates proposed for the delivery of equivalent domestic mail as determined by USPS, and (3) the rates proposed for the delivery of equivalent domestic mail as determined according the UPU's estimation that terminal dues should be equal to 70 percent of domestic first class retail rates.

(b) Please explain specifically how the rates in item (2) are calculated and the differences, if any, from the rates in item (3).

Respectfully submitted,

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